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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/494,198	01/28/2000	James P. Mitchell	00CR064/KE	3140

7590 05/30/2007

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EXAMINER	
TRINH, SONNY	
ART UNIT	**PAPER NUMBER**
2618	

MAIL DATE	DELIVERY MODE
05/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/494,198	**Applicant(s)** MITCHELL, JAMES P.	
	Examiner Sonny TRINH	**Art Unit** 2618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Response to Arguments

Applicant's arguments filed 05/04/07 have been fully considered but they are not persuasive.

In response to Applicants' argument that "...Applicants are confused by the Examiner's response for two reasons. First, the Examiner statement that "The Examiner did not reject the claims 1-2, 4-9, 11-14, 16-17 based on the 35 USC § 102 but instead used the 35 U.S. C. 103(a) that the invention is being unpatentable over Hiett" is confusing because, even under 103(a), every element of the claims must be either taught or suggested by the prior art..."

The Examiner respectfully disagree with Applicants for the followings:

Firstly, 35 U.S.C. 103(a) clearly states that:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. (emphasis added)

In this case, the Examiner rejected claims 1-2, 4-9, 11-14, 16-17 under 35 U.S.C. 103(a) as being unpatentable over Hiett ("Hiett"; Patent No. 6,477,152). Hiett discloses the invention except for the limitation "very short range" as specified in the claim language. Even though the Board of Appeals and Interferences reversed the rejection of claims 1, 2, 4-9, 11-14, 16 and 17 under 35 U.S.C. § 102(e) because they were not anticipated by Hiett, the Board of Appeals and Interferences find that the teachings of Hiett would have suggested to an artisan that the in-airport ground-based transmitter,

transmits, inter alia, over a very low range (of less than a few meters). (Please see Decision on 01/19/2006, pages 4-13, specifically page 11).

In response to Applicants' argument that: "...Applicant is confused because we did not argue that Hiett is non-analogous art. Applicant asserted that the limitation of a receiver that is limited to receiving from within a very short range is not taught nor suggested by file prior art. Applicants further argued that "this limitation and the advantage it provides cannot be realized by the system of Hiett, configured to operate at any distance." However, this statement goes to whether Hiett teaches or suggests the limitations of the claims, not whether Hiett is analogous art. As stated above, not only does Hiett not teach or suggest all of the limitations, it actually teaches away from the limitation discussed above. The Examiner respectfully disagree for the following reasons:

Hiett is an analogous art and is therefore does not teach away from the limitations. As noted below by the Board of Appeals and Interferences:

"...Since the ground-based system is intended for use with aircraft operating within the airport area, we find that an artisan would have considered it obvious to operate the ground-based airport LAN with aircraft near or at a gate of the airport, communicating, using cellular or infrared communications, etc., with the aircraft receiver 106, via interface 506, over distances as short as less than a few meters. That is, from the disclosure of a ground-based system operating within 1000 feet of the airport, it would flow from the disclosure that it would have been obvious to operate the system of Hiett from 1000 feet down to zero feet or within a few meters. As the disclosure of Hiett

would have suggested to an artisan a range that overlaps the range of the claim, according to In re Malaqari, 499 F.2d 1297, 1302, 182 USPQ 549, 553 (CCPA 1974), an overlapping range is at least prima facie obvious...". (Decision on 01/19/2006, pages 4-13, specifically page 11).

Therefore, as noted above, it is obvious to operate the system of Hiett from 1000 feet down to zero feet or within a few meters.

Therefore, the Examiner is not persuaded that Hiett teaches away from Applicant's invention or it cannot be modified in anyway the meet the requirement of a "very limited/short distance".

5/16/07

SONNY TRINH
PRIMARY EXAMINER